

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

May 4, 1984

Thomas J. Harron
City Attorney
276 Fourth Avenue
Chula Vista, CA 92010

Re: Advice Letter No. A-84-061

Dear Mr. Harron:

I apologize for the delay in my response to your request for advice on behalf of Chula Vista City Councilman Frank Scott. Your letter contained a copy of an opinion that you wrote to Councilman Scott concerning his participation in a land use decision. Councilman Scott is now confronted with a similar type of decision and you have ask us to review your past advice and make comments.

FACTS

Mr. Phil Creaser is a source of income of \$250 or more to Councilman Scott. Mr. Creaser owns a piece of undeveloped property at the northeast corner of I-805 and Bonita Road. Many people, including the City's Traffic Engineer and Mr. Scott believe that there is a traffic problem in this area.^{1/} Several attempts are being made to alleviate this traffic congestion -- expansion of East H Street, construction of Route 54, changes to the timing of the traffic lights at the I-805/E Street intersection, and road widening on various streets in the area.

A developer is proposing a 16-story apartment/condo/office building at the southwest corner of I-805 and Bonita Road. Mr. Scott is concerned that the project will increase the traffic problem to such a degree that a construction moratorium

^{1/} The focus of the traffic problem is on E Street/Bonita Road.

will be imposed on the area. He feels that a construction moratorium will have a material financial effect on Mr. Creaser.

QUESTION PRESENTED

Under the Political Reform Act, should Mr. Scott disqualify himself from the decision on the proposed development?

CONCLUSION

If the decision before the Council is whether or not to impose a moratorium on the area involving Mr. Creaser's property, Mr. Scott must disqualify himself. He must also disqualify himself if there is a significant likelihood that the decision concerning the proposed apartment/condo/office project will materially affect Mr. Creaser's property.

DISCUSSION

Mr. Creaser has been a source of income to Mr. Scott of \$250 or more within the last 12 months. Government Code Sections 87100 and 87103(c)^{2/} prohibit Mr. Scott from making, participating in the making of, or using his official position to influence, a governmental decision which he knows or has reason to know will foreseeably have a material financial effect on Mr. Creaser. A decision will have a "material" effect on Mr. Creaser if the effect will be "significant." (2 Cal. Adm. Code Section 18702(b)(3)(D).) In this case, any decision having a material effect on the value of Mr. Creaser's property would be considered to have a material effect on Mr. Creaser.

If the decision confronting the City Council is whether or not to impose a construction moratorium on the area including Mr. Creaser's property, Mr. Scott must disqualify himself from the decision because it will have a material effect on Mr. Creaser. Similarly, Mr. Scott must disqualify himself from the decision on the proposed apartment/condo/office building project if there is a significant likelihood, rather than a mere possibility, that the decision will result in the imposition of a moratorium, or otherwise have a material effect on Mr. Creaser. In determining the foreseeable effect of the

^{2/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

Thomas J. Harron
May 4, 1984
Page 3

decision, all of the facts must be considered, including the traffic improvement to be realized from the proposed street and light changes.

If I can be of any additional help to you on this matter, please feel free to call me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh



The City of Chula Vista

Office of the City Attorney (619) 691-5037

March 15, 1984

Janis Shank McLean
Counsel, Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA. 95804


Dear Janis:

Enclosed is a copy of the opinion that we discussed on the telephone regarding the conflict of interest caused by a councilman's intent to impose a moratorium on development.

As I discussed with you, this issue is going to come up again because another developer is now proposing a sixteen story apartment/condo/office building at the southwest corner of I-805 and "E" Street/Bonita Road. I would very much appreciate your review of my opinion and your advice as to what the correct procedure should be with regard to this latter development proposal.

Thank you for your courtesy and cooperation.

Very truly yours,



Thomas J. Harron
City Attorney

TJH:lgk
Enc.

January 17, 1984

Mr. Frank A. Scott
4 East San Miguel Drive
Chula Vista, CA. 92011

Re: Potential Conflict of Interest Regarding Morgan/Gardner
Development

Dear Frank:

You have requested an opinion as to whether you may participate in the Morgan/Gardner application for a General Plan amendment, rezoning and tentative map approval at Flower and E Streets. You have done business with Phil Creaser who owns a property to the east of this development at the northeast corner of I-805 and Bonita Road. You have received more than \$250 from him so he qualifies as a "source of income". The issue is whether your action on this application could have a material financial effect on Creaser's property. Incidentally, the Creaser property is now outside the City limits in the unincorporated areas controlled by the County, but it is within Chula Vista's future planning area.

There has been a great deal of criticism of the traffic condition on E Street/Bonita Road in this area both from the general public and from councilmembers. The Morgan/Gardner development would of course add to this problem. This problem was addressed in the EIR and the increase due to the Morgan/Gardner development was deemed to be insignificant. While the Traffic Engineer concedes that this area constitutes a traffic problem, he believes that the increase from the Morgan/Gardner development will not make it significantly worse.

Your concern is that as the traffic problem continues to grow, it may generate a call for a moratorium on development in this area. One possible outcome would be greater conditions imposed on future development. Either a moratorium or stricter restrictions on development could have a material financial effect on undeveloped property in this area. You, therefore, feel that you have a potential conflict of interest.

Mr. Frank A. Scott
January 17, 1984
Page Two

There are a number of other factors associated with this issue. The Engineering Department has been studying the effect of the construction of East H Street on traffic on Bonita Road. The amount of traffic now using East H Street continues to grow and it is believed that this will have an ongoing alleviating effect on E Street/Bonita Road. Route 54 to the north will be constructed in the near future and that too should have a beneficial effect on E Street. Caltrans, the County and City staff have been meeting on a proposal to time the lights at the I-805/E Street intersection and also to do some road widening in the state right of way in this area. These measures will also be beneficial to the traffic situation on E Street/Bonita Road.

Given this scenario, it is my belief that it would be premature to take any action at this time with regard to the traffic problem because measures which have already been approved or are presently being worked on may result in an acceptable traffic flow along E Street/Bonita Road. If that is the case, there would be no basis for a moratorium or greater restrictions on future development.

The problem we have at this point is trying to foresee the future to determine if a conflict may exist in the present. In order for a conflict to exist, there must be a "foreseeable" effect on your financial interests (in this case Phil Creaser) and a "foreseeable" effect exists "when there is a substantial likelihood that the effect will occur". An effect does not have to be certain to be foreseeable, however, if an effect is a mere possibility, it is not foreseeable.

The Planning Commission shared the concern about the traffic in this area, but after the Traffic Engineer's presentation felt that it would be appropriate to await the results of studies on East H Street, Route 54 and the widening and timing of signals along E Street/Bonita Road before allowing the traffic problem to affect present development plans. With this background, it is my opinion that Council's action on the Morgan/Gardner development does not have a material effect on undeveloped properties to the east. When I told you my opinion, you still did not feel comfortable with it. You, as a Councilman, can, of course, make traffic an issue immediately. You could bring it up at the public hearing and you could make a motion to deny development until such time as the full results of these traffic improvement proposals can be measured. If it was your intent to raise this issue, you are put

Mr. Frank A. Scott
January 17, 1984
Page Three

in a "damned if you do, damned if you don't" situation. If you raise the issue, there is the immediate possibility that a moratorium on development could be imposed and this could have a material financial effect on Creaser's property. If you originally intended to raise the issue and now you don't, it could give the appearance that you didn't raise the issue in order to avoid a moratorium which would benefit the Creaser property. Given this Machiavellian twist, I have advised you to play it safe and abstain. I realize this contradicts the conclusion reached in my earlier analysis that no conflict of interest presently exists, but I think it makes more sense to play it safe in this instance.

Very truly yours,

Thomas J. Harron
City Attorney

TJH:lgk